

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**BELINDA WISE**

Claimant

VS.

**CONAGRA FOODS, INC.**

Self-Insured Respondent

Docket No. 1,010,008

**ORDER**

Respondent requested review of the March 15, 2006, preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

**ISSUES**

The Administrative Law Judge (ALJ) granted claimant temporary total disability compensation commencing April 25, 2005, until she is certified as having reached maximum medical improvement or is released to substantial and gainful employment.

Respondent argues that claimant did not suffer a compensable injury arising out of and in the course of her employment at respondent. Respondent requests that the Board recognize the fraudulent nature of this claim and reverse the ALJ's preliminary Order of March 15, 2006.

Claimant contends the totality of the evidence proves that she had a preexisting bilateral carpal tunnel syndrome condition which was aggravated, intensified and worsened because of her repetitive work activities while employed at respondent. Accordingly, claimant requests that the ALJ's March 15, 2006, preliminary hearing Order be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the record presented to date, the Board makes the following findings of fact and conclusions of law:

Claimant began working for respondent on December 3, 2002. She claimed she started having problems with her hands on December 14, 2002, when she attempted to pick up a bucket that had been wedged in a machine. When she pulled on the bucket, she felt a sharp pain up her right arm all the way to her shoulder. She reported the injury to respondent and was sent to the plant nurse. By January 30, 2003, claimant was

complaining of pain in both wrists and in her right elbow. An EMG was performed on claimant in March 2003, which revealed that she had severe carpal tunnel syndrome in both wrists. Respondent denied claimant's workers compensation claim, contending she was not credible and that her symptoms were too severe and her employment too short a time for her injuries to be caused by the work she performed for respondent.

A preliminary hearing was held in June 2003, and the ALJ found that claimant "suffered at least an aggravation of a preexisting condition."<sup>1</sup> Respondent appealed, and in an Order dated October 16, 2003, the Board found that "at this juncture of the claim, the Board is unable to conclude that claimant is not credible."<sup>2</sup> The Board also found: "The greater weight of the evidence indicates that claimant's December 14, 2002 accident and the repetitive work activities that she performed after that date through approximately February 13, 2003, more probably than not aggravated a preexisting condition in claimant's upper extremities."<sup>3</sup> Accordingly, the Board affirmed the ALJ's Order.

On March 31, 2004, respondent filed an application for a preliminary hearing requesting termination of claimant's temporary total disability compensation and medical benefits. Respondent asserted that claimant lied in her testimony in the June 2003 preliminary hearing when she claimed that she had never had problems or complaints regarding her hands, wrists, or arms before her employment with respondent. Claimant acknowledged medical records indicating she was diagnosed with bilateral carpal tunnel syndrome in 2000. She claimed, however, that she never sought treatment for pain and discomfort in her wrist as a result of carpal tunnel syndrome and that no physician had notified her that she had bilateral carpal tunnel syndrome.

After a hearing, the ALJ ruled: "Although the Claimant lied in the previous hearing, and although this claim is highly suspicious, the Court cannot find the Respondent has met its burden of proof."<sup>4</sup> This Order was appealed to the Board. In its Order dated June 30, 2004, the Board stated:

The initial order for compensation included the determination that claimant's work with respondent had aggravated a preexisting condition. The fact that claimant falsely denied such preexisting condition does not alter the evidence compiled to date that her work with respondent aggravated and intensified her preexisting condition.<sup>5</sup>

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<sup>1</sup>ALJ Order (June 20, 2003).

<sup>2</sup>*Wise v. ConAgra Foods*, No. 1010,008, 2003 WL 22704177 (Kan. WCAB Oct. 16, 2003).

<sup>3</sup>*Id.*

<sup>4</sup>ALJ Order (May 11, 2004).

<sup>5</sup>*Wise v. ConAgra Foods*, No. 1,010,008, 2004 WL 1517747 (Kan. WCAB June 30, 2004).

Bilateral carpal tunnel release surgeries were performed on claimant by Dr. Lynn Ketchum. Dr. Ketchum released her on December 23, 2004, as being at maximum medical improvement (MMI). He rated claimant as having a 10 percent permanent partial impairment to each upper extremity, which combined to give her a 12 percent permanent partial impairment to the body as a whole. In April 2005, however, claimant returned to Dr. Ketchum complaining of an infection in her left hand. Dr. Ketchum opined that the infection was a complication from the surgery and thereby related to her workers compensation injury. Treatment is ongoing for this condition.

In November 2005, a third Preliminary Hearing was held wherein claimant requested an order for temporary total disability compensation. The ALJ denied this request because claimant was not under any work restrictions and because claimant had been released as being at MMI in December 2004.

On January 26, 2006, claimant took the deposition of Dr. Ketchum. Dr. Ketchum testified that claimant is still being treated for the infection in her left hand. He stated that claimant will have to be on medication for this condition for several months and she is, therefore, no longer at MMI and would be unable to do any work with her left hand. Armed with this testimony, claimant again made an application for a Preliminary Hearing, which was held on March 8, 2006. No testimony was heard at the Preliminary Hearing. Instead, the ALJ was referred to Dr. Ketchum's deposition and medical records, as well as the medical report of Dr. Gary Baker of January 23, 2006, who opined that the swelling in claimant's left hand and wrist was so profound that she could not perform any type of work with that hand.

Respondent pointed to its cross-examination of Dr. Ketchum and his medical records. Dr. Ketchum's notes from his first visit with claimant show that he asked her repeatedly if she had problems with her upper extremities before she started working at respondent, and she denied any problems. The following testimony was taken:

Q. Based upon all of this, would you agree that this lady not only had the condition, but it was most likely symptomatic before she ever went to work at Conagra?

A. Yes.<sup>6</sup>

Q. And, Doctor, if you are trying to determine whether or not a job activity aggravates an underlying or pre-existing problem, how do you make that determination?

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<sup>6</sup>Ketchum Depo. at 29.

A. Well, if the individual gets worse in the course of doing that job.

Q. But for them to make a claim that the job aggravated it, wouldn't they have to admit to you that there was a problem before they started the job.

A. Right.

Q. So in this particular case where we have a lady denying preexisting problems on repeated questioning, even though, you know, admittedly there is a repetitive nature to her job at [respondent], how can you say with any certainty that the job aggravated or worsened the condition?

A. All I can say is that it is compatible with the work history of working 6 to 7 days a week, 10 hours a day for 28 straight days for that to aggravate whatever she had. I'm not sure when she did that, I didn't nail that down in my history.<sup>7</sup>

Q. Unless somebody comes in and says, I had this problem before but I started this job and by doing this job it made it worse, absent that type of history, there is really no basis to find or offer an opinion that there was an aggravation?

A. No, only that that activity caused it.

Q. That's the only opinion you could render?

A. Right.

Q. But it's pretty clear that the job at [respondent] did not cause her carpal tunnel syndrome, isn't it?

A. No. It appears that, from all the records that we have, that there is evidence going back to 2000.<sup>8</sup>

Dr. Ketchum also agreed it was probable that claimant was symptomatic before she went to work at respondent. In context, it appears that Dr. Ketchum meant that claimant was likely symptomatic immediately before going to work for respondent in addition to claimant likely having had symptoms in the year 2000 which prompted the EMG testing which was performed back then. Nevertheless, Dr. Ketchum did not change his opinion that the work claimant performed for respondent aggravated her preexisting bilateral carpal tunnel syndrome condition.

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<sup>7</sup>*Id.* at 31-32.

<sup>8</sup>*Id.* at 32-33

In his Order dated March 15, 2006, the ALJ ordered temporary total disability compensation paid by respondent commencing April 25, 2005, until claimant is certified as having reached MMI or is released to substantial and gainful employment. On appeal, respondent argues that because claimant does not admit that she had any problems with her hands before she started working for respondent, it follows that she could not have aggravated a condition she is claiming did not exist. Also, respondent again attacks claimant's credibility, noting she never worked 28 consecutive days and only on one occasion did she work 10 hours or more in one day.

Claimant was examined in 2000 for bilateral upper extremity complaints and she was diagnosed with bilateral carpal tunnel syndrome. She denies having been told of this diagnoses. She also denies having any problems or symptoms in her upper extremities when she started working for respondent. Dr. Ketchum doubts this is true. Nevertheless, based on a corrected or at least an amended history, Dr. Ketchum still believes that claimant had a work related worsening of her condition. Respondent challenges that causation opinion because it is based upon what is still an incorrect history, as claimant actually worked fewer consecutive days and fewer hours per day than what Dr. Ketchum assumed to be true. And because claimant is not credible, none of her testimony can be believed.

The Board agrees that without a baseline, Dr. Ketchum cannot reasonably say that claimant's work activities with respondent aggravated her condition. Claimant's assertion that she was symptom free before beginning work at respondent is not credible. Dr. Ketchum agrees that claimant's EMG findings and the presence of thenar eminence atrophy were consistent not only with a longstanding condition, but also with that condition most likely being symptomatic before she began her job with respondent. In the absence of a medical opinion on causation that is based upon a reliable, credible history, this record fails to prove a work-related aggravation. Furthermore, it is probable that claimant needed the carpal tunnel release surgeries before going to work for respondent. Only claimant's testimony that she was asymptomatic gives credence to the conclusion that her work for respondent accelerated her need for that treatment. Given the testimony by Dr. Ketchum that claimant was likely symptomatic before she started working for respondent, claimant's assertion of being symptom free before going to work for respondent is not credible. Furthermore, as claimant's history is not credible, Dr. Ketchum's opinion of a work-related aggravation based on that inaccurate history is likewise not reliable. Claimant has failed to meet her burden of proving that her current condition is due to her work with respondent. Accordingly, temporary total disability compensation and medical treatment benefits are denied.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated March 15, 2006, is reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 2006.

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BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant  
Mark E. Kolich, Attorney for Self-Insured Respondent  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director